

26.1 General Discussion

It is the policy of the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBEs) (defined in 49 CFR, Part 23) have the maximum opportunity to participate in the performance of federally-financed contracts or subcontracts. To accomplish this goal, all local agencies and their contractors must take steps to ensure that DBEs are encouraged to compete for construction contracts, procurement contracts, grants, services, financial aid, or other benefits, and that DBEs have full access to these opportunities.

A local agency when participating in programs funded in whole or in part with funds made available by the Washington State Department of Transportation (WSDOT) shall comply with WSDOT's DBE Plan or develop an equivalent plan. The local agency equivalent plan shall have the approval of the Assistant Secretary for TransAid.

WSDOT's Office of Equal Opportunity (OEO) is responsible for the administration and implementation of WSDOT's Plan. OEO will conduct reviews of local agency contractors to ensure compliance with the Plan.

The Assistant Secretary for TransAid will conduct compliance reviews of the local agency's administration of the DBE Plan. A local agency that is found to be in noncompliance may lose its federal funds and/or CA status. A finding of noncompliance by the Assistant Secretary for TransAid will result when a local agency fails to ensure compliance of its contractor with the DBE requirements or fails to take remedial action at WSDOT or Federal Highway Administration (FHWA) request.

26.2 Procedures

- a. **Local Agency DBE Liaison Officer.** The local agency is responsible for ensuring program compliance and monitoring its contractor's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the local agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors.
- b. **Washington State Office of Minority and Women's Business Enterprise.** The Washington State Office of Minority and Women's Business Enterprise (OMWBE) performs the certification process to determine whether or not a firm meets the DBE criteria to qualify them for FHWA funded projects. Their address is:

Office of Minority and Women Business Enterprise
406 South Water
Olympia, WA 98504
Telephone: (360) 753-9693

Only DBE firms that are currently certified as a DBE by OMWBE may be used by prospective bidders on a FHWA funded project.

- c. **Establishment of Project DBE Goal.** The TransAid Operations Engineer will review each project to determine if it involves work elements that are conducive to DBE participation. To initiate this review, the local agency must submit an engineer's estimate with their suggested DBE goal to the Regional TransAid Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project.

If a local agency has any other projects tied to a federally funded project which utilizes one set of bid documents, the total project will be considered a federal aid project for DBE goal setting purposes.

The TransAid Operations Engineer will then establish a DBE goal for the project. In the establishment of a goal, the following criteria are considered: (1) dollar amount of the contract to ensure that it is large enough to permit efficient subcontracting; (2) the work content of the project which can be subcontracted; and (3) the availability of federally certified DBE firms having the potential to do the required work.

If a local agency feels the project goal set by the TransAid Operations Engineer is inappropriate, they may submit a request to have it changed. This request must be accompanied by justification based on the above criteria for establishing the contract goal.

Ordinance established DBE goals for public works projects may be used if they meet or exceed the goal set by the TransAid Operations Engineer. All goals must require the use of a federally certified DBE contractor (not WBE/MBE).

- d. **DBE Provisions in the Plans, Specifications, and Estimate (PS&E).** After the goal has been determined, the WSDOT General Special Provision (GSP), "Disadvantaged Business Enterprise Participation" or a WSDOT approved local agency provision shall be included in the PS&E. This GSP is available from the Regional TransAid Engineer. Only the WSDOT GSP is approved for use on an FHWA funded project. A local agency's DBE provision may be used only upon prior approval of the Assistant Secretary for TransAid.

To complete the DBE requirements in the PS&E, the form "Disadvantaged Business Enterprise Utilization Certification" will be included. This form shall be in the proposal given to each bidder. This form is available from the Regional TransAid Engineer.

- e. **Bid Opening.** Each bid proposal must be reviewed to determine if the bid is responsive. Each proposal shall contain the form "[Disadvantaged Business Enterprise Utilization Certification](#)" completed by the contractor.

Failure to complete this form will be considered as evidence that the proposal is unresponsive and, therefore, is not eligible for award.

- f. **Is the DBE Firm Certified by OMWBE?** The DBE firm named by the contractor in the bid proposal shall be certified as a DBE firm by OMWBE to be eligible for work on an FHWA funded project. To verify whether a firm is certified as a DBE and eligible to perform work on an FHWA funded project, you must call OMWBE at (360) 753-9693. To meet the goals for the project, DBE firms not certified at the time fixed for the bid opening will not be accepted by the local agency for participation, as a COA Contractor, in the project.

- g. **Selection of the Successful Bidder.** When the low bidder's bid meets or exceeds the established DBE goal for the project, the contract may be awarded to the low bidder.

When the low bidder's DBE goal bid is less than the established project goal, all responsive bids must be averaged to determine the successful low bidder.

The following is an example of how to determine a responsive bid when the low bidder's DBE bid is less than the established project DBE goal. (In the example, there are four responsive bids for the project, and a DBE goal of 16 percent was established. The fourth bidder's DBE goal was 17 percent. However, only that amount up to the established project goal may be used when computing the average goal.)

	Example 1		Example 2	
	Total Bid	DBE Bid	Total Bid	DBE Bid
Low Bid	\$ 99,000	13%	\$ 99,000	15%
Second	100,000	16%	100,000	13%
Third	100,500	15%	100,500	16%
Fourth	101,000	<u>16%</u>	101,000	<u>16%</u>
Total of DBE bids		60%		60%
Average DBE bid goals		<u>15%</u>		<u>15%</u>

In Example 1, the second low bidder would be awarded the contract since their DBE bid of 16 percent is either equal to or greater than the average DBE bid of 15 percent. The low bidder's DBE bid of 13 percent is less than the average and therefore is not a responsive bid.

In Example 2, the low bidder is awarded the contract since their DBE bid of 15 percent is either equal to or greater than the average DBE bid of 15 percent.

- h. **Condition of Award Letter.** The condition of award letter carries the same contractual obligation as the contract specifications. A condition of award letter appears as [Appendix 46.42](#). The second, third, fourth, and fifth paragraphs must be included in the letter. The DBE work shall be shown in the fifth paragraph. If a portion of an item is sublet to a DBE and the remainder is done by the contractor or another subcontractor, the DBE's work must be shown in detail in the fourth paragraph of the letter. Also, any DBE suppliers and manufacturers shall be shown.

Send a copy of this letter and a copy of the "[Disadvantaged Business Enterprise Utilization Certificate](#)" to the Regional TransAid Engineer as a part of the award documentation submittal explained in [Chapter 45](#).

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Regional TransAid Engineer shall be provided information on subletting by DBE contractors.

- i. **Monitoring of the DBE During Construction.** The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to a condition of award letter shall be submitted in the form of a change order to the Regional TransAid Engineer.

Project diary documentation of the DBE's activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor's activities.

In addition to the project diary, the form "DBE On-Site Review" should be completed by the CA Agency for every DBE condition of award (see [Appendix 46.42](#)):

- at the start of work, and/or
- at the peak period of work, and/or
- whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor's personnel. This completed form becomes a part of the local agency's project records. Additional forms are available from your Regional TransAid Engineer.

The WSDOT GSP, Disadvantaged Business Enterprise Participation, and Chapter 1 of the WSDOT Construction Manual shall be followed to ensure compliance with the DBE Plan.

In order to satisfy the contract goal, a DBE firm shall perform a commercially useful function. A commercially useful function is defined as: responsibility for executing a distinct element of contract work and carrying out those responsibilities by actually performing, managing, and supervising the work involved. The documentation in the project diary and on the DBE On-Site Review form is the information that the local agency will use to determine whether a DBE is performing a commercially useful function. If there is evidence that a DBE firm is not performing a commercially useful function, immediately contact your Regional TransAid Engineer.

- j. **Completion of Construction.** When the contract work is completed, the contractor shall submit the completed form “[Affidavit of Amounts Paid DBE Participants](#)” to the local agency. On this form, the contractor shows the actual amount paid to the DBE firm for the contract work. This completed form is required with the final estimate and must be submitted to the Olympia Service Center TransAid Operations Engineer.
- k. **Records and Reports.** The local agency will maintain such records and provide such reports as necessary to ensure full compliance with the Plan.

Upon request from the OMWBE, WSDOT, or the USDOT, the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

Forms

[WSDOT Form 140-542](#) Affidavit of Amounts Paid DBE Participants

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Affidavit of Amounts Paid DBE Participants For Local Agency Ad and Award Projects

Contractor					Agency
Address					Date
State Aid Contract No.		Federal Aid Project No.		Highway No.	
Project Title					
Contract Bid Price		DBE Condition of Award			
\$		\$			
DBE Participant Name and Address		Ethnic Code	Contract Type	Bid Item No.(s)	Amount Paid Participants (including retainage held)
Ethnic Code: B = Black I = American Indian and Alaskan Native H = Hispanic O = Other A = Asian American			Contract Type: S = Subcontractor M = Material Supplier JV = Joint Venture		Total DBE Participation Achieved \$
AFFIDAVIT					
I, the undersigned, do hereby certify that in connection with all work on the project for which this statement is submitted, each DBE participant contracted by me has been paid the amounts shown for bid items, or portions thereof, listed.					
		Signature		Title	
Notary Seal		Subscribed and sworn before me this _____ day of _____, 19____ X _____ Notary Public in and for the state of Washington residing at _____			

THIS FORM IS REQUIRED WITH THE FINAL ESTIMATE FROM THE PRIME CONTRACTOR ON ALL PROJECTS WITH DBE PARTICIPANTS

Distribution: Contractor; Local Agency; Regional TransAid Engineer